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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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SE BINE KIM

Plaintiff,
v.

U.S. DEPARTMENT OF HOMELAND SECURITY;
CHAD F.WOLF, in his official capacity as
Acting Secretary; U.S. CITIZENSHIP
AND IMMIGRATION SERVICES;
KENNETH T. (KEN) CUCCINELLI, as
Senior Official Performing the Duties of the Deputy Secretary;
JOHN THOMPSON, in his official capacity as
USCIS North East District Director;
PAULO CORREIA, in his official capacity
as Newark Field Office Director;

Case No. _____

Defendants.
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PETITION FOR A WRIT OF MANDAMUS

PLAINTIFF, through her undersigned attorney Michael J. Campise, Esq., based on personal knowledge as to himself and upon information and belief as to all other matters, alleges as follows:

INTRODUCTION

1. This is an individual action under the Mandamus Act and the Administrative Procedures Act to compel U.S. Citizenship and Immigration Services (“USCIS”) to set an

interview date for Plaintiff's N-400 Application for Naturalization, filed over two years prior to the date of the filing of this Complaint.

JURISDICTION

2. The Court has subject matter jurisdiction to hear Plaintiff's requests for relief under 28 U.S.C §§ 1331 and 1361.

3. Officials and agencies of the United States have been named as defendants. Thus, the Court has jurisdiction under the Administrative Procedures Act ("APA"). See, 5 U.S.C. § 551, et seq., and 5 U.S.C. § 701, et seq.

4. The Court has personal jurisdiction over officials and agencies of the United States under 28 U.S.C. § 1346(a)(2).

VENUE

5. Plaintiff resides in Jersey City, New Jersey. As no real property is involved in this action, venue in the United States District Court, District of New Jersey, Newark, pursuant to 28 U.S.C. § 1391(e).

PARTIES

6. Plaintiff is a Permanent Resident of the United States. She is a native and citizen of Korea. Her alien number is 099-565-284.

7. Defendant USCIS is the federal agency that is responsible for adjudicating I-130 Petitions.

8. Defendant Chad F. Wolf is the duly appointed Acting Secretary of Defendant U.S. Department of Homeland Security ("DHS"), which oversees USCIS.

9. Defendant Kenneth T. (Ken) Cuccinelli is the "Senior Official Performing the Duties of the Deputy Secretary".

10. John Thompson is the Director of USCIS's North East District.

11. Paulo Corriea is USCIS' Newark Field Office Director.

FACTUAL ALLEGATIONS

12. As noted above, Plaintiff is a Permanent Resident of the United States.

13. On February 4, 2018, USCIS received an N-400 Application for Naturalization. At the time, Plaintiff resided in 2329 143rd St, Whitestone, NY 11357. That receipt number is IOE9216670785.

14. USCIS gave Plaintiff a notice of a biometrics appointment for February 26, 2018, which Plaintiff attended.

15. On July 23, 2018, USCIS sent Plaintiff a notice to appear for a naturalization interview on August 30, 2018, at 2:05 PM at 26 Federal Plaza, New York, NY 10278.

16. When Plaintiff appeared for that interview, she was told that USCIS did not have her file and that she could not complete the interview, but that she would be given a new interview date.

17. On October 4, 2018, USCIS sent Plaintiff another interview notice, asking her to come to an interview on November 5, 2018 at 26 Federal Plaza, New York, NY 10278.

18. Plaintiff again appeared for that interview on November 5, 2018 and was again turned away due to USCIS not being able to complete the interview. Plaintiff was again told that she would be given a new interview notice. USCIS noted the Plaintiff "Appeared for interview need to reschedule 'OP' 11/5/18."

19. To date, Plaintiff has not received a new interview notice. It has been over one year.

20. In this time, Plaintiff has moved to Jersey City, NJ. Plaintiff filed a change of address notice with USCIS.

21. Despite filing this N-400 over a year before her permanent residency card expired, Plaintiff had to take the expense of filing an I-90 Application to Replace Permanent Resident Card at a cost of \$540 due to the delay. That application remains pending.

22. Plaintiff has attempted to resolve this issue by calling USCIS' customer support hotline numerous times. She has also been scheduled for and attended an InfoPass appointment in December of 2018. She has contacted USCIS' customer service number numerous times without any answers. Nothing has provided a remedy to this.

STATUTORY AND REGULATORY FRAMEWORK

23. 5 U.S.C. § 555(b) states “with due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”

24. Agency action includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 8 U.S.C. § 551(13).

25. Under 5 U.S.C. § 706, a reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.”

CAUSES OF ACTION

DEFENDANTS HAVE FAILED TO ACT ON PLAINTIFF'S APPEAL WITHIN A REASONABLE PERIOD OF TIME AS REQUIRED UNDER THE APA

26. Plaintiff refers to and incorporate herein Paragraphs 1 through 25 of this Complaint as though set forth in full hereat.

27. Under 5 U.S.C. § 555(b), each agency “shall proceed to conclude a matter presented to it” “within a reasonable time.” Under 5 U.S.C. § 706(1), a court is empowered to compel agency action that is “unlawfully withheld or unreasonably delayed.”

28. Under 28 U.S.C. § 1361, Defendants have breached their duty to act on Plaintiffs’ applications and the Court may compel Defendants to perform their duty.

29. As of the date of this Complaint, it has been over two years since Plaintiff filed her application. It has been one year and three months since Plaintiff had her last interview with USCIS – an unreasonable time.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- (1) Declare that Defendants act on Plaintiff’s N-400;
- (2) Compel Defendants to perform the duties owed to Plaintiff; and
- (3) Grant such other and further relief as the Court deems just and proper.

Dated: March 11, 2020
Fort Lee, NJ

Respectfully submitted,

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